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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,738	07/07/2003	Debasis Mitra	Mitra 24-8-11-6	6213
46303 7590 05/19/2009 RYAN, MASON & LEWIS, LLP 1300 POST ROAD, SUITE 205 FAIRFIELD, CT 06424				
EXAMINER KASRAIAN, ALLAHYAR				
ART UNIT 2617		PAPER NUMBER		
MAIL DATE 05/19/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/614,738	Applicant(s) MITRA ET AL.
Examiner ALLAHYAR KASRAIAN	Art Unit 2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 10-12, 14, 15 and 17-20
Claim(s) rejected: 1-9, 13, 16 and 21-24
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Rafael Pérez-Gutiérrez/
Supervisory Patent Examiner, Art Unit 2617

/Allahyar Kasraian/
Examiner, Art Unit 2617

Continuation of 11. does NOT place the application in condition for allowance because:

From page 9 through 12 of the Applicant's arguments/remarks with respect to claims 1, 21 and 22, Applicant argues, "even as combined in the manner suggested by the Examiner, Devi and Aukia do not teach every element of the independent claims. Furthermore, based on the KSR considerations discussed hereinafter, the combination/modification suggested by the Examiner is not appropriate."

Examiner respectfully traverses Applicant's argument. Devi as modified by Aukia discloses all limitations of the independent claims 21 and 22 on par. 0018, 0019, 0047-0049 of Devi in combination with col. 9 lines 60 to col. 11 lines 10 of Aukia (see also col. 20, line 61 to col. 22 line 6 of Aukia). See also the final Office Action mailed on 03/03/2009.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

From page 12 through 13 of the Applicant's arguments/remarks with respect to claim 23, Applicant argues, "the Examiner asserts that the length information is considered as the length of a path as being smaller or smallest. The Examiner asserts that Applicant should clarify what the length information represents in the claim and should explain the differences between the Shortest Path. Applicants note that the word 'length' is defined as 'the longest extent of anything as measured from end to end.' (See, dictionary.com.)"

This definition is not what Examiner expected. As Examiner asserts before, Applicant requires to define and differentiate the 'length information' of the claimed invention from the method used by Szvlatovski combined with Shabtay based on OSPF.

Applicant further argues, "Contrary to the Examiner's assertion, Szvlatovski does not disclose or suggest length information; Szvlatovski discloses priority levels and pre-empted bandwidth. Also, contrary to the Examiner's assertion, Applicants could find no disclosure or suggestion of length information in Shabtay. Applicants also find no disclosure or suggestion that the length information is provided by the OSPF protocol, or that it is combined by bandwidth availability information of the links to utilize a rerouting mechanism."

Examiner respectfully traverses the argument since Hameleers et al. (US Patent Application Publication # 20010026549) relates OSPF with length information, "OSPF is an interior gateway routing protocol that supports a variety of distance metrics, such as the physical distance, delay etc." (see par. 0048)

In response to applicant's argument that "Applicants also find no disclosure or suggestion that the length information is provided by the OSPF protocol", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The references made on the office actions are done so for the convenience of the Applicant. They are not meant to be limiting and should be considered as a whole.

Applicant(s) are reminded that the Examiner is entitled to give the broadest reasonable interpretation to the language of the claim. The Examiner is not limited to Applicant's definition, which is not specifically set forth in the claims, *In re Tanaka et al.*, 193 USPQ 139, (CCPA) 1977.